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Mar 05 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court

H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2023-CP-10-00112
Appellate Case No. 2023-000751

In the Matter of: The Estate of Juleanne Judy Bryan
Margaret Elaine Chapman,Appellant,

v.

Grady W. DuBose, Wilson Wade Judy and Marvin Lee Judy, III Respondents

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE AND FACTS 2

ARGUMENTS..... 4

CONCLUSION..... 7

TABLE OF AUTHORITIES

Cases

Elam v. S.C. Dep’t of Transp.,
361 S.C. 9, 602 S.E.2d 772 (2004) 5

Futch v. McAllister Towing of Georgetown, Inc.,
335 S.C. 598, 518 S.E.2d 591 (1999) 6

Glasscock, Inc. v. U.S. Fid. & Guar. Co.,
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)..... 6

Great Games, Inc. v. S.C. Dep’t of Revenue,
339 S.C. 79, 529 S.E.2d 6 (2000) 4

In re Est. of Cretzmeyer,
365 S.C. 12, 615 S.E.2d 116 (2005) 4, 6

Jones v. Lott,
387 S.C. 339, 692 S.E.2d 900 (2010) 6

Mears v. Mears,
287 S.C. 168, 337 S.E.2d 206 (1985) 5

Repko v. Cnty. of Georgetown,
424 S.C. 494, 818 S.E.2d 743 (2018) 6

Shealy v. Doe,
370 S.C. 194, 634 S.E.2d 45 (Ct. App. 2006)..... 6

State v. Brown,
358 S.C. 382, 596 S.E.2d 39 (2004) 4

State v. Devore,
416 S.C. 115, 784 S.E.2d 690 (Ct. App. 2016)..... 4

Statutes

S.C. Code Ann. § 62-1-308..... passim

Rules

Rule 208, SCACR..... 3

Rule 209, SCACR..... 4

Rule 210, SCACR..... 2

Rule 260, SCACR..... 4

STATEMENT OF ISSUE ON APPEAL

1. Did the circuit court correctly apply S.C. Code Ann. § 62-1-308 in dismissing this appeal from the probate court where Margaret Elaine Chapman failed to timely file a notice of intent to appeal, failed to timely file a statement of issues on appeal, failed to order a transcript, and failed to file a brief with the circuit court?

STATEMENT OF THE CASE AND FACTS

This matter is before the Court following an appeal from the probate court to the circuit court of an order approving and enforcing a mediated settlement agreement. (R. at 96-97). The underlying order of the probate court was transmitted to counsel on December 22, 2022. (R. at 95). Chapman filed a notice of intent to appeal on January 5, 2023. (R. at 96-97, 73-75).¹

Following the filing of the notice, Chapman did not order a transcript and did not timely file a statement of issues on appeal within the deadlines established by S.C. Code Ann. § 62-1-308 for appeals from the probate court. Respondents filed a motion to dismiss the appeal on February 15, 2023. (R. at 98-100). Chapman then failed to file or serve her appellant's brief with the circuit court. (R. at 109-16).

The motion to dismiss was heard on March 27, 2023. Chapman did not present any evidence or exhibits for the circuit court's consideration.² (R. at 16-39). The circuit court granted

¹ The notice correctly recites that the order is dated December 22, 2022. It is unclear from the notice when Chapman claims to have received notice of the order. (R. at 97). Based on counsel's arguments at the hearing (but not supported by any evidence), counsel received the email from the probate court, but it was not sent to his AIS address and he was on vacation and did not register that an order had been issued until he received a hard copy on December 28. (R. at 28:6-29:11).

² The record before the circuit court on the motion to dismiss the appeal included only the following: (1) motion to dismiss with attached December 22, 2022 email from probate court transmitting order (R. at 98-108); (2) supplemental materials submitted in support of motion to dismiss appeal, attaching the affidavit of court reporter confirming transcript not ordered, supplemental circuit court authority, and a copy of the public index for the appeal (R. at 109-16).

Respondents filed a motion to strike with this Court, seeking to remove any reference to matters that were not presented to the lower court or tribunal as required by Rule 210(c), SCACR. The Court granted the motion by order dated November 20, 2023 "to the extent that the disputed matters were not presented to the circuit court and the probate court." Chapman did not file an amended brief and designation, but instead asserted that counsel "finds no matters which were not presented to the circuit court or probate court in this matter." The following items were not presented to either court: death certificate of Juleanne Judy Bryan (included in the probate file but not presented to the probate court), will of Juleanne Judy Bryan (included in the probate file but not presented to the probate court), cover letter of John Chase serving order of December 22, 2022, sample letter noticing parties of possible delinquent filing, and AIS information on appellant's

the motion to dismiss by order dated April 6, 2023, finding that there was no appellate jurisdiction due to Chapman's failure to comply with the requirements of § 62-1-308. (R. at 7-10). The circuit court cited numerous failures to comply with § 62-1-308 each of which served "as an independent basis for dismissal" as follow:

(i) The appeal was not timely filed. As set forth in § 62-1-308(a), the "notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court." Here, the parties received written notice of the order on appeal on December 22, 2022 by email from the Probate Court's law clerk. The notice of appeal was filed more than ten days later, and, therefore, was not timely.

(ii) As a separate an independent basis for dismissal, Appellant did not file a statement of issues on appeal within the deadline set by § 62-1-308(b)("Within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties."). The filing deadline expired for the Statement of Issues on Appeal on February 6, 2023 (the next business day after 45 days from the receipt of written notice of the order). Appellant's after the fact filing of a statement of issue on appeal on February 13, 2023 cannot correct this deficiency.

(iii) As a separate an independent basis for dismissal, Appellant has not perfected her appeal as required by § 62-1-308(c) because she made no arrangements with the court or court reporter for furnishing the transcript. As set forth in § 62-1-308(c), "[w]here a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript." Here, Respondents submitted an affidavit from the court reporter demonstrating that Appellant made no arrangements with the court or court reporter for furnishing the transcript. This fact was undisputed by Appellant.

attorney. In addition, the following materials were not presented to the circuit court: mediated agreement of the parties, summons and complaint for common law marriage of Grady DuBose, proposed orders of parties before the probate court, and inventory and appraisal of summary for estate of Juleanne Judy Bryan. Respondents again ask that these matters and any arguments related thereto not be considered by the Court.

(iv) As a separate and independent basis for dismissal, Appellant has not perfected her appeal as required by § 62-1-308(e) because she has not filed her brief. As set forth in S.C. Code Ann. § 62-1-308(d), “[w]ithin thirty days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.” Section 62-1-308(e) states, “[a]t the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service.” Appellant filed her Designation of Matter to be Included in the Record on Appeal on March 15, 2023, but she has yet to file her brief as required by the statute.

(R. at 8-9). Chapman did not file a motion to alter or amend. This appeal followed.

ARGUMENTS

“[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction.” *State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016), quoting *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *Great Games, Inc. v. S.C. Dep’t of Revenue*, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000); see also Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the appellate court rules). “South Carolina Code section 62-1-308 governs an appeal from a probate court order to the circuit court.” *In re Est. of Cretzmeyer*, 365 S.C. 12, 13, 615 S.E.2d 116, 116 (2005) (affirming dismissal of probate court appeal for failure to timely file appeal with circuit court). Section 62-1-308 must be construed according to its unambiguous terms. *Id.*

Here, Chapman failed to timely file a notice of intent to appeal. As set forth in § 62-1-308(a), the “notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.” Here, the parties received written notice of the probate court’s order on December

22, 2022, and Chapman did not file a notice of intent to appeal until January 5, 2023. (R. at 102-08, 96-97). Chapman’s counsel admitted at the hearing that he received the probate court’s transmittal email. (R. at 29:3-5). He further admitted that he was on vacation and not monitoring his emails at the time. (R. at 28:14-29:11). These excuses do not change the fact that the appeal was not timely filed.

“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004), *citing Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)). Given this failure, the circuit court correctly dismissed the appeal.

In addition to the failure to timely file, the circuit court also found that Chapman failed to file a timely statement of issues on appeal, failed to order the transcript, and failed to file a brief all as required by § 62-1-308. With respect to the statement of issues on appeal, Chapman argues again that she calendared based on receipt of the hard copy of the order on December 28, 2022. This argument is unavailing for the same reasons her argument relating to the notice of appeal fails.

With respect to the transcript, Chapman does not argue that she made any effort to order the transcript. Instead, she unilaterally claims it was not needed. This argument is directly refuted by the mandatory language of § 62-1-308(c), “[w]here a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript.” The statute does not make an exception if “the Appellant

saw no need for a transcript[.]” (App. Brief at C). Chapman’s efforts to rewrite the statute must fail. “South Carolina Code section 62-1-308 governs an appeal from a probate court order to the circuit court.” *Cretzmeyer*, 365 S.C. at 14, 615 S.E.2d at 116 (2005) (“We decline Appellant’s invitation to construe the statute in a manner inconsistent with its unambiguous terms.”).

In addition, Chapman failed to file a brief as required by § 62-1-308(e). Chapman does not and cannot make any arguments on this point. As such, the order of dismissal may be affirmed solely on this basis. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive). This argument has been abandoned, and the circuit court’s order must be affirmed by operation of the two issue rule. *Shealy v. Doe*, 370 S.C. 194, 205–06, 634 S.E.2d 45, 51 (Ct. App. 2006) (“[W]hen an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal.”); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”), *abrogated on other grounds by Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018). Chapman cannot correct this failure in her reply brief. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (“Additionally, even though [Appellant] more fully addressed the issue in its reply brief, an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.”).

CONCLUSION

Chapman did not comply with the requirements of § 62-1-308. The circuit court dismissed her appeal based on her independent failures to (1) timely file, (2) timely serve a statement of issues on appeal, (3) order the transcript, and (4) file a brief. For any and all of these reasons, the circuit court was correct in dismissing this appeal, and the order of dismissal must be affirmed.

Respectfully submitted,

s/ Sarah P. Spruill

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CERTIFICATE OF COUNSEL

I certify that the Brief of Respondents in this matter complies with Rule 211(b), SCACR.

(Signature Page to Follow)

Respectfully submitted,

s/ Sarah P. Spruill

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